

DAVID M. LOUIE 2162
Attorney General of Hawaii

ROBYN M. KUWABE 3001
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

Attorneys for Complainant Director
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2010-25
)	(Inspection No. 313078859)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Complainant,)	
)	STIPULATION AND SETTLEMENT
vs.)	AGREEMENT; EXHIBIT A; APPROVAL
)	AND ORDER
LEEWARD ROOFING & GENERAL)	
CONTRACTING,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent LEEWARD ROOFING & GENERAL CONTRACTING ("Respondent") having
reached a full and complete settlement of the above-captioned contested case presently pending
before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about February 1, 2010 through July 8, 2010, the Director, by and through
the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected

Respondent's workplace located at 99-859 Iwaiwa Street, Aiea, Hawaii 96701.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on July 30, 2010 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$46,200.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 99-859 Iwaiwa Street, Aiea, Hawaii 96701.

3 At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.

5. The violations and corresponding characterizations as stated in the Citation are amended as follows:

a. The characterization of Citation 2, Item 1 is changed from Willful to Serious with a penalty of \$2,100.00.

b. The characterization of Citation 2, Item 2 is changed from Willful to Serious with a penalty of \$2,100.00.

6. The Director reduces the aggregate penalty from \$46,200.00 to \$8,400.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.


DATED: Honolulu, Hawaii, March 16, 2011.

LEEWARD ROOFING & GENERAL
CONTRACTING


CLAYTON RIVERA
Owner

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

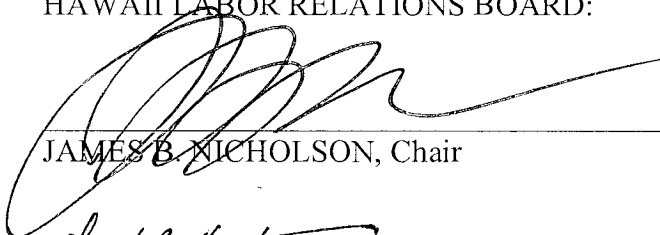

ROBYN M. KUWABE
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 426

DATED: March 29, 2011


JAMES B. NICHOLSON, Chair


SARAH R. HIRAKAMI, Member


NORMAN K. KATO II, Member

Director, Department of Labor and Industrial Relations v. Leeward Roofing & General Contracting, OSH 2010-25
(Insp. No. 313078859) – Stipulation and Settlement Agreement

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 0100 0005 8250 7760

Citation and Notification of Penalty

To:

Leeward Roofing & General Contracting
and its successors
PO Box 886
Waianae, HI 96792

Inspection Number: 313078859
Inspection Date(s): 02/01/2010- 07/08/2010
Issuance Date: 07/30/2010
OSHCO ID: R1844
Optional Report No.: 00910
Inspection Type: Unprogrammed Related
Scope of Inspection: Comprehensive Inspection

Inspection Site:

99-859 Iwaiwa St
Aiea, HI 96701

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

PEARL IMADA IBOSHI, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Leeward Roofing & General Contracting
PO Box 886
Waianae, HI 96792

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/30/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078859

Inspection Dates: 02/01/2010-07/08/2010

Issuance Date: 07/30/2010



Citation and Notification of Penalty

Company Name: Leeward Roofing & General Contracting
Inspection Site: 99-859 Iwaiwa St, Aiea, HI 96701

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.502(d)(21) [Refer to chapter 12-121.2, HAR] was violated because:

Two defective Safe Waze model 4823 concrete anchor straps were used by two employees for fall protection on a commercial building roof. Per the manufacturer's label, the concrete straps were supposed to be installed around steel reinforcing rods before concrete walls and floors are constructed; however, the concrete anchor straps were cut and nailed to the roof surface. Using the defective anchor straps not per the manufacturer's design exposed the employees to a fall hazard with the potential for serious injuries.

29 CFR 1926.502(d)(21) states "Personal fall arrest systems shall be inspected prior to each use for wear, damage and other deterioration, and defective components shall be removed from service."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 99-859 Iwaiwa Street

Date By Which Violation Must be Abated:
Penalty:

08/09/2010
\$ 2,100.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078859

Inspection Dates: 02/01/2010 - 07/08/2010

Issuance Date: 07/30/2010



Citation and Notification of Penalty

Company Name: Leeward Roofing & General Contracting
Inspection Site: 99-859 Iwaiwa St, Aiea, HI 96701

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.503(a)(1) [Refer to chapter 12-121.2, HAR] was violated because:

The employer failed to provide adequate fall protection training to their employees to recognize and address fall hazards that they may encounter at project sites. Employees walked and worked on a commercial building roof even though fall protection systems were not in place around thirty-eight skylights that were between 25 to 29 feet above the interior floor level. Employees installed and used two defective anchor straps on a commercial building roof. Fall hazards exposed employees to potential serious injuries.

29 CFR 1926.503(a)(1) states "The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

09/01/2010
\$ 2,100.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078859

Inspection Dates: 02/01/2010-07/08/2010

Issuance Date: 07/30/2010



Citation and Notification of Penalty

Company Name: Leeward Roofing & General Contracting
Inspection Site: 99-859 Iwaiwa St, Aiea, HI 96701

Citation 2 Item 1 Type of Violation: **Willful**

HAR §12-110-2(f)(1)(A) was violated because:

The employer allowed their employees and subcontractor employees to walk and work on a commercial building roof when fall protection systems were not in place around thirty-eight skylights that were between 25 to 29 feet above the interior floor level. As fall protection systems around the roof skylights were not in place, the employer and subcontractor employees were exposed to fall hazards with the potential for serious injuries. On January 26, 2010, a subcontractor employee fell through an unprotected roof skylight and sustained serious injuries.

§12-110-2(f)(1)(A) states "Where one contractor is selected to execute the work of a project, that contractor shall ensure compliance with the requirements of the standards of part 3 of this title from the contractor's own employees as well as from all subcontractor employees on the project."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 99-859 Iwaiwa Street

Date By Which Violation Must be Abated:

08/09/2010

Penalty:

\$ 21,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078859

Inspection Dates: 02/01/2010 - 07/08/2010

Issuance Date: 07/30/2010



Citation and Notification of Penalty

Company Name: Leeward Roofing & General Contracting
Inspection Site: 99-859 Iwaiwa St, Aiea, HI 96701

Citation 2 Item 2 Type of Violation: **Willful**

29 CFR 1926.501(b)(4)(i) [Refer to chapter 12-121.2, HAR] was violated because:

Six employees walked and worked on a commercial building roof which had thirty-eight skylights that were between 25 to 29 feet above the interior floor level. All employees were not protected from falling through the skylights by conventional fall protection systems erected around the skylights, thus the employees were exposed to fall hazards with the potential for serious injuries.

29 CFR 1926.501(b)(4)(i) states "Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 99-859 Iwaiwa Street

Date By Which Violation Must be Abated:
Penalty:

08/09/2010
\$ 21,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078859

Inspection Dates: 02/01/2010 - 07/08/2010

Issuance Date: 07/30/2010



Citation and Notification of Penalty

Company Name: Leeward Roofing & General Contracting
Inspection Site: 99-859 Iwaiwa St, Aiea, HI 96701

Citation 3 Item 1 Type of Violation: **Other**

29 CFR 1926.503(b)(1) [Refer to chapter 12-121.2, HAR] was violated because:

The employer had not completed written fall protection certification records for six workers who were exposed to various potential fall hazards at a commercial building roof project.

29 CFR 1926.503(b)(1) states "The employer shall verify compliance with paragraph (a) of this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

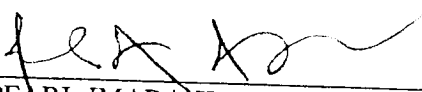
Location: Establishment

Date By Which Violation Must be Abated:

09/01/2010

Penalty:

\$ 0.00


PEARL IMADA IBOSHI
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Leeward Roofing & General Contracting
Inspection Site: 99-859 Iwaiwa St, Aiea, HI 96701
Issuance Date: 07/30/2010

Summary of Penalties for Inspection Number 313078859

Citation 1, Serious	= \$ 4,200.00
Citation 2, Willful	= \$ 42,000.00
Citation 3, Other	= \$ 0.00
TOTAL PENALTIES	= \$ 46,200.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.